

Written observations in applications nos. 25802/18 and 27338/18 *Strøbye v. Denmark and Rosenlind v. Denmark*

Introduction

1. The European Network of National Human Rights Institutions (ENNHRI) is a registered association representing National Human Rights Institutions ('NHRIs') within the Council of Europe region. Its membership currently comprises 44 NHRIs from 39 Member States of the Council of Europe of which 37 are internationally accredited with 'A' or 'B' status in reference to the United Nations ('UN') 'Paris Principles'.¹ NHRIs are State bodies independent from the government and separate from civil society organisations, with a broad mandate to promote and protect human rights.
2. Many NHRIs have, as part of their statutory functions, the ability to intervene in human rights cases before national, regional and/or international courts and tribunals in cases concerning constitutional and international human rights provisions. In this capacity, NHRIs regularly appear before the courts as neutral parties providing expertise on human rights matters.
3. On 28 June 2019, the European Court of Human Rights ('ECtHR') granted ENNHRI leave to intervene in these Applications by way of written submissions in accordance with Article 36(2) of the European Convention on Human Rights ('ECHR') and Rule 44(3) of the Rules of the Court.²
4. The merits of the case concern the compatibility with Article 3 of the Protocol No. 1 to the ECHR, taken alone or read in conjunction with Article 14 of the ECHR in relation to the removal of the right to vote for people who are under full legal/economic guardianship.
5. This submission will provide the ECtHR with information on the following issues of relevance to deprivation of the right to vote for people under guardianship:
 - a. Danish law, including information on the changes in the legal framework and its effects.
 - b. International human rights standards regarding the right to vote for persons with disabilities.
 - c. Legislation and jurisprudence on this topic across the Council of Europe Member States.

Danish law

6. Under Danish law it is possible to offer various forms of support measures to persons needing assistance to execute their legal capacity to act. Under the legal framework in force during the material period of the applicants' cases, the Danish Guardianship Act allowed for support in the form of financial and personal guardianship. A person is placed under financial and/or personal

guardianship in accordance with the Guardianship Act Section 5 if the person requests for or needs a guardian due to a 'weakened state' – such as those caused by some mental illness, severe dementia, intellectual disabilities or other types of impairment that makes the person unable to look after his or her personal and/or financial affairs.

7. The guardian is a legal representative and can enter into legally binding agreements on behalf of the person under guardianship. However, the person under guardianship pursuant to Section 5 is not deprived of his or her legal capacity.
8. Deprivation of legal capacity is provided for in the Guardianship Act Section 6. A person is placed under such guardianship if the person is under full financial guardianship in accordance with Section 5, but still enters into legally binding agreements that are detrimental to the person. A person is therefore placed under such guardianship to prevent the person from exposing his or her assets, income or other economic interests to deteriorating substantially.
9. It follows that persons with severe intellectual disabilities might still be able to keep their legal capacity even though they are placed under a full financial guardianship (pursuant to Section 5) if they do not risk economic exploitation, for instance because they do not have assets that can be abused. Hence, the deprivation of legal capacity (section 6) presupposes not only an intellectual disability but also a risk of exploitation. In other words, it is not the intellectual capacity of the person under guardianship that solely determines whether to deprive the person of his or her legal capacity, but also the economic circumstances of that person.
10. The deprivation of legal capacity entails the deprivation of voting rights in accordance with section 29 of the Danish constitution, but only in relation to national parliamentary elections and referendums. Due to an amendment of the Danish regulation in 2016, persons under section 6 guardianship are no longer excluded from participating in elections for municipal and regional authorities and for the European Parliament.³ It is estimated that approximately 1.900 persons are under section 6 guardianship and therefore excluded from participating in national parliamentary elections and referendums.⁴
11. Motivated by the Supreme Court's decision in the cases of the current applicants, a proposal for a parliamentary resolution went through the first reading in the Danish Parliament on 1 April 2018.⁵ The proposal suggested to task the government with starting a process leading to a change in the rules for legal guardianship. The Danish government announced that it would initiate an analysis of the Danish guardianship legislation. The analysis was published by the Ministry of Justice (*Justitsministeriet*) on 3 October 2018. Based on the analysis, the Ministry of Justice suggested a new legal model that allows persons to be only partially deprived of legal capacity, as opposed to the former situation, where a person could only retain their legal capacity in all circumstances or be fully deprived of it. According to the suggested model, a person can also retain the right to vote for national parliamentary elections and referendums,

thus being allowed to vote in all elections, even though that person is still deprived of legal capacity in other areas. The model was suggested in a bill, which the Danish Parliament adopted unanimously on 20 December 2018. It entered into force on 1 January 2019.

12. From 1 January 2019 to 15 May 2019, only seven individuals have applied to be considered for the new partial legal guardianship enabling them to vote in elections for parliament.⁶ As to ENNHRI's knowledge, none of the applicants has been granted this new partial legal guardianship.
13. **It follows from the information above that, during the material period of the applicants' case, persons deprived of their legal capacity under the Guardianship Act Section 6 were deprived of their voting rights without an individualised examination of their capacities in relation to exercising this specific right. Furthermore, the difference in treatment in relation to regional, municipal and European elections on one side and national parliamentary elections and referendums on the other side is also not based on any assessment of capacities to vote of persons without legal capacity, neither individually nor in general.**

International human rights standards

14. The Court will, in interpreting ECHR, look "*for any consensus and common values emerging from the practices of the European States and specialised international instruments... as well as giving heed to the evolution of norms and principles in international law.*"⁷
15. On the right to vote of persons with disabilities in particular, the European Court of Human Rights stated in the landmark case of *Alajos Kiss v Hungary* that "*the treatment as a single class of those with intellectual or mental disabilities is a questionable classification, and the curtailment of their rights must be subject to strict scrutiny. This approach is reflected in other instruments of international law, referred to above [...]. The Court therefore concludes that an indiscriminate removal of voting rights, without an individualised judicial evaluation and solely based on a mental disability necessitating partial guardianship, cannot be considered compatible with the legitimate grounds for restricting the right to vote.*"⁸
16. The right to vote is firmly rooted in international and European Union ('EU') law. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Charter of Fundamental Rights of the EU all include provisions on the right to vote. The UN Convention on the Rights of Persons with Disabilities ('the CRPD') elaborates the right to vote in the context of persons with disabilities. The CRPD is the most advanced document protecting the rights of persons with disabilities. 46 out of 47 Member States⁹ have ratified the CRPD.
17. Most relevant to the present applications, the CRPD distinguishes between legal capacity in Article 12 and the right to vote in Article 29, the latter calling for the State Parties to guarantee

to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.

18. In May 2014, the Committee on Rights of Persons with Disabilities (‘the CRPD Committee’)¹⁰ adopted General Comment no. 1 (2014) on Article 12,¹¹ which explores the general obligations deriving from Article 12. The CRPD Committee, referring to Article 29 of the CRPD, holds that “... *a person’s decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising their political rights, including the right to vote [...]*”¹²
19. The CRPD Committee has dealt with issues relating to people with disabilities losing the right to vote as a result of being deprived of legal capacity in several of its concluding observations.¹³ In its initial report on Tunisia in 2011, the CRPD Committee, referring to Article 29, recommended urgent action to ensure that persons with disabilities, including persons currently under guardianship or trusteeship, can exercise the right to vote.¹⁴ In the initial report on Spain in 2010, the link between legal capacity and the right to vote was made clearer, as the CRPD Committee said it was concerned “... *that the right to vote of persons with intellectual or psychosocial disabilities can be restricted if the person concerned has been deprived of his or her legal capacity [...]* *It is further concerned that the deprivation of this right appears to be the rule and not the exception.*”¹⁵ Most recently in 2018, in its concluding observations on the initial reports on Poland and Bulgaria, the CRPD Committee expressed concern regarding legislation depriving persons without legal capacity or persons under guardianship of the right to vote.¹⁶
20. The CRPD Committee has also expressed its views on the automatic loss of the right to vote for persons placed under partial or full guardianship in a communication under the Optional Protocol to the CRPD from September 2013 (*Bujdosó and five others v. Hungary*).¹⁷ The CRPD Committee found a violation of Article 29 of the CRPD and stated inter alia that “*Article 29 does not provide for any reasonable restriction or exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention.*”¹⁸
21. The Council of Europe (CoE) Committee of Ministers (CM) has also expressed its views on legal capacity and the link to voting rights. In February 1999, it adopted a recommendation on the principles concerning the legal protection of “incapable adults” in which it recognised that restriction of legal capacity should be possible where it is shown to be necessary for the protection of the person concerned. In continuation of this it stated that “... *a measure of protection should not automatically deprive the person concerned of the right to vote [...]*”¹⁹
22. In 2006, the CM adopted the “Recommendation on the Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society”. It reaffirmed the importance of the right

- to vote for persons with disabilities and asked the Member States to take specific actions to “... ensure that no person with a disability is excluded from the right to vote or to stand for election on the basis of her/his disability.”²⁰
23. In 2011, the CM adopted another recommendation on the participation of persons with disabilities in political and public life. It confirmed that all persons with disabilities “... have the right to vote on the same basis as other citizens, and should not be deprived of this right by any law limiting their legal capacity [...]”²¹
 24. The Parliamentary Assembly of the Council of Europe (‘PACE’) adopted a resolution in 2009 on “Access to rights for people with disabilities and their full and active participation in society”, in which all Member States were invited to guarantee that people with disabilities retain and exercise legal capacity on an equal basis with others, inter alia, by taking measures to ensure that people placed under guardianship are not deprived of their fundamental rights, including the right to vote.²²
 25. In 2017, PACE adopted another resolution on “The political rights of persons with disabilities: a democratic issue”, in which it expressed concern about “... an unjustified link between legal capacity and the right to vote [...]”²³, and called on member and observer states to “delink the right to vote from legal capacity and full guardianship [...]”²⁴
 26. The trends towards guaranteeing the right to vote for all persons with disabilities on an equal basis with others can also be identified in the position of the European Commission for Democracy Through Law (‘Venice Commission’), which is the Council of Europe’s advisory body on constitutional matters. While in 2002 the Venice Commission adopted Opinion no. 190/2002 on the Code of Good Practice in Electoral Matters,²⁵ which allowed for the limitation of political rights in cases of “mental incapacity”, it adopted a revised interpretative declaration to the Code of Good Practice in Electoral Matters in 2011, emphasising the principle of universal suffrage for persons with disabilities. The Venice Commission’s current position is that “[p]eople with disabilities should therefore be able to exercise their right to vote and participate in political life as elected representatives on an equal basis with other citizens”, and that “[p]eople with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the CRPD [...]”²⁶
 27. The Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) has recommended “parliaments [to] review the legal capacity provisions in co-ordination with expert DPOs [disabled persons organisations] and remove legal barriers for persons with disabilities who have legal guardians to participate equally in public and political life”.²⁷
 28. At the EU level, the European Commission communicated its European Disability Strategy 2010-2020 in November 2010 in which is noted that “EU action will support and supplement national

*policies and programmes to promote equality, for instance by promoting the conformity of Member State legislation on legal capacity with the UN Convention."*²⁸

29. **Based on the information above, there is a consensus emerging from specialised international instruments at the levels of the United Nations and of Council of Europe that the right to vote for persons with disabilities shall be the rule and that persons with disabilities should not be deprived of this right due to a link between the right to vote and legal capacity.**

Legislation & jurisprudence across the Member States

30. The European Union Agency for Fundamental Rights ('FRA') has analysed the right to political participation for persons with disabilities across **the European Union**, focusing on elections to the European Parliament and municipal election. In its report from 2010²⁹ and 2014³⁰, FRA identified that the right to vote in EU Member States was often linked in national legislation to legal capacity. Recently, in its follow-up report in 2019, FRA noted that there is a steady progress towards universal suffrage in the EU. According to FRA, "*Legal capacity has been a focus of reforms at the national level linked to the ratification of the CRPD [...] Taken together, the reforms demonstrate a clear trend towards reducing restrictions on the right to vote of people with disabilities deprived of legal capacity.*"³¹
31. In March 2019, the European Economic and Social Committee ('EESC') also adopted a report on the right to vote for persons with disabilities across the EU Member States, in which it is stated that "[a] clear tendency can be observed in recent years in the Member States' legal systems. Instead of automatic deprivation of voting rights of all citizens who are placed under guardianship (who lose legal capacity), the systems are moving towards solutions with either no deprivation of voting rights or a limited number of cases of deprivation, decided by a court on the basis of an individual assessment."³² In the report, the EESC analyses the different barriers to voting rights for persons with disabilities in relation to European elections, but notes that similar solutions are applied in national parliamentary elections.³³
32. **In order to present the European Court of Human Rights with relevant legislation and jurisprudence across Council of Europe Member States, ENNHRI gathered information from 17 member NHRIs. The following information from Council of Europe Member States demonstrate a tendency towards reducing restrictions on the right to vote for citizens placed under guardianship or without legal capacity:**
- 32.1 In 2003, the Constitutional Court of **the Republic of Slovenia** found the automatic withdrawal of the right to vote for persons declared legally incapable to be unconstitutional. The Court noted that the criteria for withdrawing voting rights had to be determined in detail to encroach as little as possible upon universal suffrage.³⁴ As a consequence of the decision, the relevant

provision was amended to enact a system of individual assessment through judicial proceedings to decide on the withdrawing of the right to vote, which still applies today.

- 32.2 **The United Kingdom** completely delinked legal capacity and the right to vote with section 73 of the Electoral Administration Act 2006 abolishing any 'common law' restrictions on voting rights for persons lacking legal capacity.
- 32.3 **The Netherlands** amended the Dutch Constitution in 2008 making it no longer possible to deprive someone of the right to vote.³⁵ Before 2008, Article 54(2)(b) of the Constitution stated that those who were legally "incompetent" due to a "mental disorder", as decided by a final judicial decision, did not have the right to vote. The amendment was caused by a judgment of the Council of State (*Raad van State*) of 29 October 2005, in which it was decided that a categorical exclusion may be unreasonable in a given situation.
- 32.4 In **Hungary**, a new constitution (the Fundamental Law) has been in force since 1 January 2012 in which the existing system of automatic deprivation of voting rights for all citizens who were deprived of legal capacity was changed into a system where a court will decide in each individual case whether to deprive somebody of their voting rights. The legal reforms in Hungary were a response to the ECtHR's decision in *Alajos Kiss v. Hungary*.
- 32.5 In **Latvia**, an amendment to section 356 of the Civil Law was made in 2012 and is in force since 1 June 2013. As a result, persons deprived of legal capacity shall not be denied the right to vote.³⁶
- 32.6 In December 2012, the **Croatian** Parliament adopted the Act on Register of Voters in which the right to vote was restored for persons deprived of legal capacity. In the previous electoral act, persons with disabilities who were placed under guardianship were struck from the electoral register. Following the amendment, there is no restriction of voting rights based on legal capacity. The provisions equally apply to national, local and European Parliament elections.
- 32.7 According to a report from OSCE/ODIHR, the legislation was also amended in **Liechtenstein** in 2012 to provide broader suffrage right for voters under guardianship. Automatic loss of voting right for persons with mental disabilities was abolished and is now decided by a court decision on a case-by-case basis.³⁷
- 32.8 Before 2014, persons deprived of legal capacity in **the Czech Republic** were automatically excluded from exercising the right to vote. That approach was criticized by the Constitutional Court in 2010, which found unconstitutional the automatic loss of suffrage without considering one's individual capacities.³⁸ A new Civil Code came into force in 2014 abolishing the automatic deprivation of voting rights and replacing it with a new system under which the decision to remove voting rights for persons deprived of legal capacity is made on an individual basis by a court. Currently, a new law on elections is being prepared by the Ministry of Interior, according to which a restriction of a right to vote will no longer be possible at all.

- 32.9 In **Belgium**, the Law of 17 March 2013 changed the possibility of automatic deprivation of some persons' voting rights into a more flexible mechanism. Based on this law, it is now assumed that all people are entitled, as far as possible, to exercise their rights by themselves and, when setting up a tailor-made scheme, it must be specified which acts the protected person is considered to be incapable of exercising (voting rights may be included in these acts). However, automatic deprivation of the right to vote is no longer possible.
- 32.10 In 2015, the Assisted Decision-Making (Capacity) Act was signed into law in **Ireland**. The Act implements a new system to support decision-making by adults with capacity-related difficulties (instead of a guardianship model) creating several different support options. Consequently, the possibility of depriving someone of their voting rights was abolished.
- 32.11 In a judgment from 22 March 2017, the Constitutional Court of **Slovakia** ruled that legal deprivation of the right to vote due to an intellectual disability was against the Constitution of the Slovak Republic. These provisions in the electoral law expired six months after the date the ruling was published.
- 32.12 In October 2018, the Constitutional Court of **the Republic of Moldova** declared Article 13 para. (1), let. (b) of the Electoral Code unconstitutional.³⁹ The provision deprived persons declared incapacitated by a final decision of the court of the right to vote. The Constitutional Court noted in its judgment that, when declaring a person incapacitated, the *raison d'être* of protecting that person from the negative consequences of his own actions was also extended to the right to vote. Thus, the ban on voting provided by Article 13 para. (1), let. (b) of the Electoral Code was grounded on the mere supposition that a person declared incapacitated is incapable of exercising the right to vote. The Constitutional Court also noted that such a presumption has been and is largely rejected by national and international courts, which have emphasised instead that, except for well-defined cases, people with mental disabilities must enjoy the right to vote. Because of this judgment, the automatic loss of voting rights for persons without legal capacity is no longer a reality in the Republic of Moldova.⁴⁰
- 32.13 On 5 December 2018, the Congress of Deputies to **Spain** adopted the Organic Law 2/2018 amending the Organic Law 5/1985 on the General Electoral Regime to guarantee the right of suffrage of all persons with disabilities. After this change, in practice no person with a disability can be deprived of the right to vote and those who were deprived previously will recover this right automatically.⁴¹
- 32.14 On 29 January 2019, the Federal Constitutional Court in **Germany** declared Section 13 (2) of the Federal Elections Act (which excluded persons who were subject to legal guardianship in all their affairs from the right to vote) as unconstitutional because this provision was violating both the principle of universal suffrage under Article 38(1) first sentence of the German Constitution and the prohibition of discrimination on grounds of disability under Article 3(3) second sentence of

the German Constitution.⁴² Following this ruling, Section 13(2) has now been removed as of 1 July 2019,⁴³ and all persons under guardianship over the age of 18 are fully entitled to vote.

- 32.15 In March 2019, **France** repealed the electoral code's Article L.5, which allowed guardianship judges to withdraw the voting rights of adults under guardianship.⁴⁴ Article L.5 was applicable since 2005 and until the repeal. Prior to 2005, a person with disabilities under guardianship would automatically lose the right to vote. Thus, with the repeal of Article L.5, the last step was taken to abolish the exclusion of persons under guardianship from the right to vote.
- 32.16 In **Cyprus** no recent changes have happened to the relevant legal framework, but Article 31 of the Constitution provides that all people of Cyprus have the right to vote and stand for election. Article 64(d) of the Constitution excludes persons suffering from a mental disability from standing for election, but not from voting.
- 32.17 According to the Election Act of 1998 in **Finland**, every citizen who has reached the age of 18 is entitled to vote. This applies to national, local and European elections.
- 32.18 A person deprived of legal capacity in **Estonia** does not automatically lose the right to vote. The right to vote can be restricted, but the court must make an individual assessment and specifically decide on whether to remove the voting rights.⁴⁵
33. **The above shows that, since 2003, at least 15 of the Council of Europe Member States have gone through changes, most of which have happened after the CRPD entered into force in 2008, indicating a very clear trend towards securing voting rights for persons under guardianship or persons deprived of their legal capacity. This is further supported by the fact that no Member States has introduced legislation or practices aimed at further limiting the right to vote for this group in this period.**
34. ENNHRI acknowledges that automatically removing the right to vote of persons with intellectual disabilities and deprived of their legal capacity is still a reality in some Council of Europe Member States, such as Azerbaijan⁴⁶ and Bosnia and Herzegovina⁴⁷. Where this is the case, the UN CRPD Committee has been consistent in recommending States to guarantee the right to vote for persons deprived of legal capacity, in conformity with the CRPD.⁴⁸ **In spite of these practices, the trend towards ensuring voting rights of persons deprived of their legal capacity is noticeable across Council of Europe Member States.**

Conclusion

35. ENNHRI submits that the clear implication from the recent changes in legislation, jurisprudence and practices across Council of Europe Member States is that there is a consensus and common values emerging around the principle that the voting rights of persons with disabilities, including those under regimes that restrict or remove their legal capacity, shall be guaranteed and cannot be withdrawn solely based on a disability.
36. ENNHRI also submits that this consensus can equally be inferred from different resolutions, opinions, statements and recommendations from various international and regional human rights bodies, which have repeatedly emphasised that the automatic link between the right to vote and one's legal capacity disproportionately infringes upon the political rights of persons with disabilities.

Endnotes

- ¹ These principles were adopted by the UN General Assembly in Resolution 48/134 of 20 December 1993 and set out objective criteria against which NHRIs are tested for their independence, pluralism, impartiality and accountability.
- ² On 8 July 2019, the Court agreed to grant an extension of the time allowed for submitting the written observations until 9 August 2019.
- ³ Act 381 of 27 April 2016, available in Danish at <https://www.retsinformation.dk/Forms/R0710.aspx?id=179917>
- ⁴ Denmark Ministry of Justice, "Analysis of the rules on guardianship with the purpose of enabling more persons under guardianship the right to vote for Parliament", 3 October 2018, page 11, available in Danish at <https://www.ft.dk/samling/20181/almDEL/SOU/bilag/22/1954131.pdf>
- ⁵ Parliamentary Resolution (*Beslutningsforslag*) B 71, Parliament 2017-18. The entire reading is available in Danish at <https://www.ft.dk/samling/20171/beslutningsforslag/B71/BEH1-75/forhandling.htm>
- ⁶ Information from Socialpædagogen Online, available in Danish at <https://socialpaedagogen.sl.dk/arkiv/2019/05/faa-bruger-ny-stemmeret/>
- ⁷ European Court of Human Rights, *Opuz v. Turkey* (application no. 33401/02), para. 164 (2009).
- ⁸ European Court of Human Rights, *Alajos Kiss v Hungary* (application no. 38832/06), para. 44 (2010).
- ⁹ The only Council of Europe Member State that has not ratified the CRPD is Liechtenstein.
- ¹⁰ The CRPD Committee, established in accordance with Article 34 CRPD, is composed of independent experts which are tasked with monitoring implementation of and compliance with the CRPD, publishing general comments containing interpretation on articles of the CRPD, examining individual petitions under the Optional Protocol (where applicable), among others.
- ¹¹ UN Committee on the Rights of Persons with Disabilities, General Comment no. 1 on article 12 of the UN CRPD, CRPD/C/GC/1, 19 May 2014.
- ¹² *Ibid*, para. 48.
- ¹³ All States Parties to the CRPD must submit regular reports to the CRPD Committee on how the rights are being implemented. The Committee examines each report and makes suggestions and general recommendations on the report. It forwards these recommendations, in the form of concluding observations, to the State Party concerned.
- ¹⁴ Committee on the Rights of Persons with Disabilities, CRPD/C/TUN/CO/1 (13 May 2011), para 35.
- ¹⁵ Committee on the Rights of Persons with Disabilities, CRPD/C/ESP/1 (5 October 2010), para 47.
- ¹⁶ Committee on the Rights of Persons with Disabilities, CRPD/C/POL/CO/1 (29 October 2018), para 51(a) and CRPD/C/BGR/CO/1, para 61.
- ¹⁷ Committee on the Rights of Persons with Disabilities, CRPD/C/10/D/4/2011, Views adopted by the CRPD Committee at its tenth session (2-13 September 2013)
- ¹⁸ *Ibid*, para. 9.4.
- ¹⁹ Recommendation no. R(99) 4 of the Committee of Ministers to Member States on the Principles of Concerning the Legal Protection of Incapable Adult (adopted on 23 February 1999).
- ²⁰ The Council of Europe Recommendation R(2006)5 of the Committee of Ministers to Member States on the Council of Europe Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006-2015 (adopted on 5 April 2006).
- ²¹ Recommendation CM/Rec(2011)14 of the Committee of Ministers to Member States on the Participation of Persons with Disabilities in Political and Public Life (adopted on 16 November 2011)
- ²² The Parliamentary Assembly of the Council of Europe (PACE) Resolution 1642 on "Access to rights for people with disabilities and their full and active participation in society", adopted January 26 2009, page 2, para. 7.2
- ²³ The Parliamentary Assembly of the Council of Europe (PACE) Resolution 2155 on "The political rights of persons with disabilities: a democratic issue", adopted 10 March 2017, para. 1
- ²⁴ *Ibid*, para. 7.2.1.
- ²⁵ European Commission for Democracy through Law (Venice Commission), Opinion no. 190/2002 on the Code of Good

- Practice in Electoral Matters, CDL-AD(2002)023
- ²⁶ European Commission for Democracy through Law (Venice Commission), Revised interpretative declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections, 19 December 2011, CDL-AD(2011)045.
- ²⁷ OSCE/ODIHR, Guidelines on Promoting the Political Participation of Persons with Disabilities, 2019.
- ²⁸ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Region, European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe, COM(2010) 636, page 7
- ²⁹ The European Agency for Fundamental Rights, "The right to political participation of persons with mental health problems and persons with intellectual disabilities", 2010, page 15.
- ³⁰ The European Agency for Fundamental Rights, "The right to political participation of persons with disabilities: human rights indicators", 2014, page 39-40.
- ³¹ The European Agency for Fundamental Rights, "Who will (not) get to vote in the 2019 European Parliament Elections", 2019, page 3, emphasis added.
- ³² European Economic and Social Committee: "The real right of persons with disabilities to vote in EP elections", adopted on 20/03/2019, SOC/554-EESC-2017, para. 5.2.1., emphasis added.
- ³³ Ibid, para. 1.5.
- ³⁴ The Constitutional Court of the Republic of Slovenia, 10 July 2003, no. U-I-346/02.
- ³⁵ Except for those who are convicted for a criminal offence and sentenced to prison for a minimum of one year if the judge ordered the voting right to be withdrawn (temporarily).
- ³⁶ Section 356 of the Civil Law envisage that "a person shall not be restricted in personal non-financial rights". For reference see also initial report of Latvia, 29 October 2015, CRPD/C/LVA/1, para. 352.
- ³⁷ Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) needs assessment and mission report (conducted 29 November to 1 December 2016) on the Parliamentary Elections 5 February 2017 in the Principality of Liechtenstein, page 4.
- ³⁸ Judgement of the Constitutional Court of the Czech Republic from 12 July 2010, No. IV.ÚS 3102/08.
- ³⁹ The Constitutional Court of the Republic of Moldova, decision of October 2018, case no. 105g/2018.
- ⁴⁰ A court can still deprive an individual of the right to vote, which is now the exception rather than the rule.
- ⁴¹ According to a recent report from OSCE (28 April 2019), page 6, the law still provides for the deprivation of voting rights by a court on an individual basis, although interlocutors from the OSCE Needs Assessment Mission expressed doubts that such decisions would be made in practice.
- ⁴² Case reference: 2 BvC 63/14.
- ⁴³ Article 1 of the Federal "Act to amend the Federal Elections Act and Other Laws" of 18 June 2019.
- ⁴⁴ Article 11 of law no. 201-222 of 23 March 2019 of 2018-2022 programming and reform for justice (repeal of article L.5).
- ⁴⁵ See article 526 ("Appointment of guardian") of the Estonian Code of Civil Procedure.
- ⁴⁶ Article 56 (2) of the Constitution of Azerbaijan states that those recognised as incapables by court decisions have no right to take part in elections and in referendum. Persons recognised as incapable are defined in article 28 (8) of the Civil Code of Azerbaijan, which states that natural persons who suffer from "mental retardation" or "mental disease" may be declared by court as those have no legal capacity.
- ⁴⁷ Article 3.2. paragraph (3) of the Election Law of Bosnia and Herzegovina.
- ⁴⁸ CRPD Committee, Concluding observations on the initial report of Azerbaijan, CRPD/C/AZE/CO/1; CRPD Committee, Concluding observations on the initial report of Bosnia and Herzegovina, CRPD/C/BIH/CO/1

